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Bailments: Duty of Bailee to Bailor: Bailee's Setting up Adverse Claim in Chattel

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RECENT DECISIONS

BAILMENTS—DUTY OF BAILEE TO BAILOR—BAILEE'S SETTING UP ADVERSE CLAIM IN CHATTEL.—*A* rented a "horse-racing" starting gate, his own invention, to *B* for the season. At the end of the season, with *B's* consent, the gate was left on *B's* property. *C*, a creditor of *A*, began action against *A*, a non-resident, by publication, and issued a writ of garnishment against *B*. *B* answered that it had in its possession the gate belonging to *A*. Judgment by default was rendered against *A*. A month later the gate was sold by the sheriff for $89 to an employee of *B*. *B* had the gate at the time of the tender by *A* and at the time of the trial. *A* sought to set aside the judgment and sale. It was disclosed at the trial that *A* had no permanent address, that the gate was worth about $2500, that *B* had tried to notify *A* of the garnishment proceedings, and that *A* had tendered to *B* the amount of the judgment, interest and costs. By the time of the trial *B* was also demanding the costs of repairs since made on the gate. The trial court dismissed the action. On appeal, *held*, judgment affirmed. *Puett* v. *Bernhard*, (Wash. 1937) 71 P. (2) 406.

It is stated as a general rule that a bailee is estopped to deny the bailor's title. *Pulliam* v. *Burlingame*, 81 Mo. 111, 51 Am. Rep. 229 (1883). The bailee must return the chattel to the bailor before he can assert an adverse claim. *Blackorby* v. *Friend*, 134 Minn. 1, 158 N.W. 708 (1916); *Nudd* v. *Montayne*, 38 Wis. 511, 20 Am. Rep. 25 (1875). An exception to the above rule has been recognized; where the bailee has given the goods to an adverse claimant, he can defend an action against him by the bailor by showing that such claimant was the true owner. *Abasi Bros.* v. *Louisville & N. R. Co.*, 115 Miss. 803, 76 So. 665 (1917); *Yokohama Specie Bank* v. *Geo. Bush & Co.*, 121 Wash. 272, 209 Pac. 676, 212 Pac. 583 (1922). When money, goods, or other chattels are deposited with a bailee for safekeeping they may at any time be subjected to attachment or garnishment by a creditor of the bailor. *Cooley* v. *Minn. Transfer R. Co.*, 53 Minn. 332, 55 N.W. 141 (1893). This relieves the bailee from liability provided he has given sufficient and prompt notice of such legal process to the bailor. *American Exp. Co.* v. *Mullins*, 212 U.S. 311, 29 Sup. Ct. 381, 53 L.ed. 525 (1909); *Indiana, I. & I. R. Co.* v. *Dorenieyer*, 20 Ind. App. 611, 50 N.E. 497 (1898); *Ohio & M. R. Co.* v. *Yohe*, 51 Ind. 181, 19 Am. Rep. 727 (1875); *Jewett* v. *Olsen*, 18 Or. 421, 23 Pac. 262, (1890); *Henderson* v. *Hooper Sugar Co.*, 65 Utah 241, 236 Pac. 239, 45 A.L.R. 637 (1925). The bailee must also use his knowledge of the facts in determining whether the property is that of the debtor. *Branch* v. *Bekins Van & Storage Co.*, 106 Cal. App. 623, 290 Pac. 146 (1930). Where the property is seized by a creditor of the bailee the bailee must account to the bailor. *Love* v. *People's Compress Co.*, 137 Miss. 622, 102 So. 275 (1924). Where the bailee has some possessory right by virtue of the bailment, e.g. a lease, which he may assert against the bailor, this right will be protected as against legal process instigated by creditors of the bailor. *Noel* v. *Cowan*, 80 Mont. 258, 260 Pac. 116 (1927); *Dixon* v. *White Sewing Machine Co.*, 128 Pa. 397, 18 Atl. 502 (1889); *Smith* v. *Niles*, 20 Vt. 315, 49 Am. Dec. 782 (1848).

In the instant case the bailor had tendered to the bailee the amount of the judgment with interest and costs. It is submitted that the bailor's attempt to have the judgment and sale set aside was ill advised. The service by publication was effective to give the Washington court power to act against the bailor and to cause the judgment to be satisfied out of the property seized. The bailee had tried to notify the bailor. And the bailee was under no duty to save the gate

from the sale. Here, however, the bailee, did buy in through its employee. Whether a bailee is a "fiduciary" may be an academic inquiry [see *Exton & Co.* v. *Home Ins. Co.,* 249 N.Y. 258, 164 N.E. 43 (1928), *Doyle* v. *Murphy,* 22 Ill. 502, 74 Am. Dec. 165 (1895) and *Sindlinger* v. *Dept. of Financial Inst.,* (Ind. 1936) 199 N.E. 715] but a bailee is not a stranger to the bailor. If he does protect the bailor's goods by saving them from the sale, or by buying in after the sale, he should be reimbursed for what he is out of pocket, and he should have a lien in the chattel to secure his claim, but that should be the extent of his interest. With the instant case compare *Enos* v. *Cole,* 53 Wis. 235, 10 N.W. 377 (1881). In that case the defendant sheriff had seized the bailor's chattel and had sold it to enforce a tax warrant issued against the bailee. The bailee had bought in at the sale to protect the chattel. Thereafter the bailor sued the sheriff for a conversion of the chattel and the action was dismissed. The court pointed out that the bailee was not in default on his contract with the bailor. The bailor was not hurt by the defendant's conduct. Nor could the bailee in that case charge the bailor with the expense of the saving.

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BANKS AND BANKING—STOCKHOLDERS' ADDED LIABILITY—LIABILITY OF SUCCESSIVE HOLDERS OF THE SAME SHARES.—Rose Hunt Taylor, one of the appellants, owned six shares of the capital stock of the Peoples State Bank of Ramsey. In January of 1930 her husband was elected a director of the bank. He owned only four shares of stock, and in order to enable him to qualify as a director, she assigned to him the six shares owned by her. It was agreed between them that the stock would be returned to her as soon as the husband could secure other shares. Two months later the husband did secure six shares of stock and had the newly acquired shares regularly transferred on the bank's stock records to his wife. In February, 1931, the bank was closed and a receiver was appointed. The receiver began an action to enforce the superadded liability of the stockholders. The par value of the stock was $100 per share. Mrs. Taylor had paid $600, the amount assessed on the six shares she owned at the time the bank closed, but she contested an assessment of an equal sum on the stocks which she assigned to her husband. The only issue was whether the successive holding of six shares, by a stockholder, imposes a greater liability than a continuous holding of the same number of shares. The appellate court reversed the decree of the trial court which had found for the defendant. On appeal, *held,* judgment of the appellate court affirmed. The assessment for double liability of stockholders of a bank can be made against all stock held by the stockholder. Identity in the number of shares owned is not equivalent to identity of the stock ownership. Each separate holding subjects the holder to an assessment for liability of the bank incurred during the holding of such stock. *Bombal* v. *Peoples State Bank of Ramsey,* (Ill. 1937) 10 N.E. (2d) 651.

The Illinois constitution provides that every state bank shareholder shall be liable, to an amount equal to the par value of his share of stock, for all liabilities accruing to the bank while he remains a stockholder. And since the statute of limitations does not begin to run until the cause of action arises, the holder of stock in an Illinois state bank may be held liable several years after he has sold his stock. Successive owners of the same share of stock may each be held liable to the amount of the par value of the stock for losses accruing during their respective ownership of the same stock. *Sanders* v. *Merchant's State Bank,* 349 Ill. 547, 182 N.E. 897 (1932). Under the Illinois rule enforcement of the